

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALTA LOMA SCHOOL DISTRICT, WEST
END SELPA, and SAN BERNARDINO
COUNTY SUPERINTENDENT OF
SCHOOLS.

OAH CASE NO. 2014010335

ORDER DENYING MOTION TO
DISMISS

On January 14, 2014, Alta Loma School District (Alta Loma), West End SELPA [special education local plan area] (SELPA), and San Bernardino County Superintendent of Schools, referred to collectively as “Districts,” filed a motion to dismiss (motion) Student’s request for a due process hearing (complaint).¹ On January 14, 2014, Student filed an opposition to the motion.

APPLICABLE LAW

Although the Office of Administrative Hearings (OAH) will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc . . .), special education law does not provide for a summary judgment procedure.

DISCUSSION

Districts argue that Student is not a resident of Alta Loma, and is “homeless” as defined by the McKinney Vento Act. (20 U.S.C. § 11430 et seq.) This is the underlying reason for Student filing his complaint that he has been excluded from the placement and school offered in his IEP. Therefore, they claim OAH does not have jurisdiction to conduct a hearing in this matter. In essence, Districts are making a motion for summary judgment,

¹ The document containing the motion also contains a notice of insufficiency that will be addressed in a separate order.

asking that OAH find there is no factual dispute, and OAH grant their motion on these legal grounds.

Here, the motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. The location of Student's residence appears to be a contested fact. Whether Student is entitled to attend the school and program that he alleges he has been prevented from attending is also a contested issue. These factual issues must be decided in a due process hearing. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

ORDER

The Districts' motion to dismiss the complaint is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: January 15, 2014

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings